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8 **UNITED STATES DISTRICT COURT**
9
10 **NORTHERN DISTRICT OF CALIFORNIA**
11 **SAN FRANCISCO COUNTY**

12 FESAITU MARIO, an individual, on his own
13 behalf and on behalf of all others similarly
14 situated,

15 v.
16 Plaintiff,

17 SWISSPORT USA, INC., a Delaware
18 corporation, SWISSPORT CARGO
19 SERVICES, L.P., a California limited
20 partnership,

21 Defendants.

12 **CASE NO.**

13 **CLASS ACTION COMPLAINT FOR:**

- 14 **1. Meal and Rest Break Violations (*Labor*
15 *Code §§ 200, 226.7, 512, and 12 CCR §*
16 *11040*);**
- 17 **2. Failure to Pay Overtime Compensation
18 (*Welfare Commission Orders and Labor*
19 *Code §§ 510, 1194*);**
- 20 **3. Failure to Provide Proper Wage
21 Statement (*Lab. Code § 226(a)*);**
- 22 **4. Unfair Business Practices (*Business*
23 *and Professions Code § 17200*); and**
- 24 **5. Failure to Pay All Wages and Overtime
25 Compensation in Violation of the Fair
26 Labor Standards Act ("FLSA")**

27 **DEMAND FOR JURY TRIAL**

28 All allegations in this Class Action and Collective Action Complaint ("Complaint") are
29 based upon information and belief, except for those allegations which pertain to the Plaintiff
30 named herein and his counsel. Plaintiff's information and belief is based upon, *inter alia*, the

1 investigation conducted to date by Plaintiff and his counsel. Each allegation in this Complaint
2 either has evidentiary support or is likely to have evidentiary support after a reasonable
3 opportunity for further investigation and discovery. Plaintiff FESAITU MARIO (“Plaintiff” or
4 “MARIO”), on behalf of himself and all others similarly situated, alleges as follows:

5 **INTRODUCTION**

6 1. This matter is brought as a class action, pursuant Federal Rule of Civil Procedure
7 23, a collective action pursuant to 29 U.S.C. §201, *et. seq.*, and, after exhaustion of administrative
8 requirements has been completed as an enforcement action pursuant to California Labor Code §
9 2698 *et. seq.*, on behalf of Plaintiff and the putative class, which is defined more specifically
10 below, but which is comprised, generally, of all former and current non-exempt employees of
11 Defendant SWISSPORT USA, INC., a Delaware corporation and/or its subsidiaries (“Swissport
12 USA”) and Defendant SWISSPORT CARGO SERVICES, L.P., a California limited partnership
13 and/or its subsidiaries (“Swissport Cargo”) (collectively, “Defendants” or “Swissport”). The Rule
14 23 Class Period is from April 14, 2013, to the date judgment is rendered herein. The FLSA Claim
15 Class Period is from April 14, 2014, to the date judgment is rendered herein.

16 2. Plaintiff seeks relief on behalf of himself and the members of the putative class as
17 a result of employment policies, practices and procedures more specifically described below,
18 which violate the California Labor Code, and the orders and standards promulgated by the
19 California Department of Industrial Relations, Industrial Welfare Commission, and Division of
20 Labor Standards, and the Fair Labor Standards Act, and which have resulted in the failure of
21 Defendants to pay Plaintiff and members of the putative class all wages due to them. Said
22 employment policies, practices and procedures are generally described as follows:
23

- 24 a. Defendants failed to provide Plaintiff and members of the putative class with
25 timely meal and rest breaks (California Labor Code §§ 200, 226.7, 512, 12 CCR
26 § 11040, and 29 U.S.C. §201, *et. seq.*);
27 b. Defendants routinely failed to pay Plaintiff and members of the putative class
correct overtime compensation (Welfare Commission Orders and California Labor
Code §§ 510, 1194); and,
28 c. Defendants failed to provide Plaintiff and members of the putative class with

proper wage statements (California Labor Code § 226(a)).

3. In addition, Plaintiff and members of the putative class seek relief and damages for Defendants' violation, by way of the above-described conduct, of California's unfair competition laws (California Business & Professions Code § 17200), including the equitable remedies of declaratory relief, disgorgement, accounting, and restitution.

4. Plaintiff and the members of the putative class seek relief and damages for Defendants' violation, by way of the above-described conduct, of the Fair Labor Standards Act. Plaintiff and this proposed class alleges that Defendants' payroll practices with respect to its non-exempt employees in California and in the United States, caused it to inaccurately calculate the rates used for overtime and straight time.

JURISDICTION AND VENUE

5. This Court has original jurisdiction over the claims asserted herein individually and on behalf of the class pursuant to 28 U.S.C. §1332, as amended in February 2005 by the Class Action Fairness Act. Subject matter jurisdiction is proper because: (1) the amount in controversy in this class action exceeds seventy-five thousand dollars, exclusive of interest and costs; and (2) a substantial number of the members of the proposed classes are citizens of a state different from that of Defendants. Personal jurisdiction is proper as Defendants have purposefully availed themselves of the privilege of conducting business activities within this District

6. The Northern District of California has personal jurisdiction over the Defendant named in this action because Defendant is a corporation or other business entity authorized to do business in the State of California and registered with the California Secretary of State to do sufficient business with sufficient minimum contacts in California, and/or otherwise intentionally avails itself of the California market through the ownership and operation of approximately retail stores within the State of California including airport services at the San Francisco Airport where Plaintiff is employed, to render the exercise of jurisdiction by the California courts consistent with traditional notions of fair play and substantial justice.

7. Defendants have operated their business and committed violations of the California Labor Code, which are the subject of the present complaint, in this District. As such,

venue is proper in this judicial district under 28 U.S.C. §1391(b)(2), because Defendant conducts business in this District and a substantial part of the acts or omissions giving rise to the claims set forth herein occurred in this District.

8. This Court has subject matter jurisdiction over this class action under 28 U.S.C. §§1331 and 1337(a). Specifically, this action presents claims under the Federal Labor Standards Act (“FLSA”) and accompanying state law claims under the California Labor Code, which form part of the same case or controversy under Article III, section 2 of the U.S. Constitution.

INTRADISTRICT ASSIGNMENT (LOCAL RULE 305(b))

9. As provided in Northern District Civil L.R. 3-2(d), this Action shall be assigned to the San Francisco Division as the actions giving rise to this litigation occurred in the County of San Francisco.

THE PARTIES

10. Plaintiff is over the age of eighteen and a resident of San Mateo, California.

11. According to <http://www.Swissport.com>, Defendant Swissport USA is the largest provider of ground and cargo handling services in the aviation industry. Swissport provides services on behalf of approximately 835 client-companies and handles around 230 million passengers and 4.1 million flights (movements) per year. Swissport operates around 133 warehouses and moves approximately 4.3 million tons of cargo. Swissport has a workforce of around 62,000 personnel and is active in more than 280 stations in 48 countries across five continents. Swissport is divided into six (6) sections, including Ground Handling, Cargo, Fueling, Executive Aviation, Security and Maintenance.

12. According to <http://www.Swissport.com/network/>, Defendant Swissport Cargo provides cargo services to fifteen (15) airports in North America including, Boston, Massachusetts; Atlanta, Georgia; Cleveland, Ohio; Des Moines, Iowa; El Paso, New Mexico; Houston, Texas; Los Angeles, California; Miami, Florida; New York City, New York; Newark, Connecticut; Phoenix, Arizona; San Francisco, California; Seattle, Washington and Washington Dulles International Airport. According to Swissport's website, "Cargo Services" include the following activities: Freight Handling (on/off airport); Mail Handling; Document Handling

- 1 (import/export); Integrator Handling; Cargo Handling in a Third-Party Facility; Freighter Ramp
- 2 Services/Transportation; Outsourced Hub Operations and Management; Network Handling
- 3 Services (Off-Line); Call Centre and Airline Customer Services; Trucking Services;
- 4 Warehousing; and e-Freight Services.

5 13. The members of the proposed class are likewise current and former employees of
6 Swissport, employed by Defendants within the United States during the Class Period as non-
7 exempt employees.

FACTUAL ALLEGATIONS

14. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

10. Plaintiff and the members of the putative class were and are classified by
11. Defendants as non-exempt employees, pursuant to the provisions of the California Labor Code,
12. and the orders and standards promulgated by the California Department of Industrial Relations,
13. Industrial Welfare Commission, and Division of Labor Standards. As non-exempt employees,
14. Plaintiff and members of the putative class are entitled to certain benefits, including mandated
15. meal and rest breaks. In addition, said statutory provisions, wage orders, regulations and
standards obligate the employer to maintain accurate records of the hours worked by employees.

16. According to <http://www.Swissport.com>, Defendant Swissport USA is the largest
17 provider of ground and cargo handling services in the aviation industry. Swissport provides
18 services on behalf of approximately 835 client-companies and handles around 230 million
19 passengers and 4.1 million flights (movements) per year. Swissport operates around 133
20 warehouses and moves approximately 4.3 million tons of cargo. Swissport has a workforce of
21 around 62,000 personnel and is active in more than 280 stations in 48 countries across five
22 continents. Swissport is divided into six (6) sections, including Ground Handling, Cargo,
23 Fueling, Executive Aviation, Security and Maintenance.

24 17. According to <http://www.Swissport.com/network/>, Defendant Swissport Cargo
25 provides cargo services to fifteen (15) airports in North America including, Boston,
26 Massachusetts; Atlanta, Georgia; Cleveland, Ohio; Des Moines, Iowa; El Paso, New Mexico;
27 Houston, Texas; Los Angeles, California; Miami, Florida; New York City, New York; Newark,

1 Connecticut; Phoenix, Arizona; San Francisco, California; Seattle, Washington and Washington
2 Dulles International Airport. According to Swissport's website, "Cargo Services" include the
3 following activities: Freight Handling (on/off airport); Mail Handling; Document Handling
4 (import/export); Integrator Handling; Cargo Handling in a Third-Party Facility; Freighter Ramp
5 Services/Transportation; Outsourced Hub Operations and Management; Network Handling
6 Services (Off-Line); Call Centre and Airline Customer Services; Trucking Services;
7 Warehousing; and e-Freight Services.

8 18. Plaintiff alleges that he has been employed by Defendants as a "Cargo Agent" in
9 the San Francisco Airport since approximately April 2015. Plaintiff is a current employee of
10 Defendants. He makes approximately \$15 an hour and works from Monday to Friday beginning
11 at around 5:00 p.m. Plaintiff works from 40 to 80 hours a week. Plaintiff's Direct Supervisor is
12 Anuman Pillay. Based upon information and belief, Plaintiff alleges that he and the other
13 members of the putative class were informed of policy changes on a frequent basis.

14 ***Defendants' Failure to Provide Meal and Rest Breaks***

15 19. Plaintiff alleges that Defendants routinely understaffed the shifts worked by
16 Plaintiff and the members of the putative Classes making it impossible to take meal and rest
17 breaks at the times designated by the California Labor Code, which are set forth below. Plaintiff
18 and the members of the putative class were unable to stop to take meal and rest breaks or else the
19 airline services would come to a standstill causing even a further delay of the import/export
20 through the airports. The lack of sufficient employees to deal with the volume of airport traffic
21 was a constant issue that Defendants have not resolved.

22 20. Plaintiff is further informed and believes, and based thereon alleges, that as a
23 matter of policy and/or practice, Defendants routinely failed to provide Plaintiff and the members
24 of the putative class, with meal and rest periods during which they were relieved of all duties by
25 requiring them to remain on duty.

26 21. At all times, relevant hereto, California Labor Code § 226.7 and IWC Wage Order,
27 number 9-2001, section 12, required employers to authorize, permit, and provide a ten (10) minute
28 paid rest for each four (4) hours of work, during which employees are relieved of all duties.

1 22. At all times, relevant hereto, California Labor Code § 226.7(b) and IWC Wage
2 Order, number 9-2001, section 12 required employers to pay one hour of additional pay at the
3 regular rate of compensation for each employee and each workday that a proper rest period is not
4 provided.

5 23. Plaintiff is informed and believes, and based thereon alleges, that Defendants
6 failed to effectively communicate the California rest period requirements to Plaintiff and the
7 members of the putative class. Plaintiff is further informed and believes and based thereon alleges
8 that throughout the relevant time period Defendants failed to provide rest periods.

9 24. Throughout the Class Period, Plaintiff and the members of the putative class were
10 routinely denied the rest breaks they were entitled to under California law.

11 25. Specifically, throughout the Class Period, Defendants regularly:

- 12 a. Failed to provide paid rest periods of ten (10) minutes during which
13 Plaintiff and the members of the putative class were relieved of all duties
14 for each four (4) hours of work and able to take rest periods within the
15 middle of the shift;
- 16 b. Failed to pay Plaintiff and the members of the putative class one (1) hour
17 of pay at their regular rate of compensation for each workday that a rest
18 period was not permitted.
- 19 c. Failed to provide Plaintiff and the members of the putative class with a first
20 meal period of not less than thirty (30) minutes during which they are
21 relieved of all duties before working more than five (5) hours;
- 22 d. Failed to provide Plaintiff and the members of the putative class with a second meal period of not less than thirty (30) minutes during which they
23 are relieved of all duties before working more than ten (10) hours per day;
- 24 e. Failed to pay Plaintiff and the members of the putative class one hour of
25 pay at their regular rate of compensation for each workday that a meal
26 period was not provided; and
- 27 f. Failed to accurately record all meal periods.

1 ***Defendants' Failure to Pay Overtime Compensation***

2 Plaintiff alleges that Defendants routinely understaffed the shifts worked by Plaintiff and the
3 members of the Putative Classes making it impossible to complete their job duties within an eight
4 (8) hour shift. Plaintiff alleges that given the lack of employees combined with the heavy airport
5 traffic and significant time sensitive job duties, it was impossible for them to leave at the end of
6 the designated shift or else the airline cargo services would come to a standstill of airport activities
7 in various sections. The lack of sufficient staffing to perform job duties was a constant issue that
8 Defendants still have not resolved. Indeed, Plaintiff and the members of the putative class were
9 reprimanded for not being able to complete job duties in the scheduled time period, but
10 Defendants failed to provide sufficient staffing to perform all the job duties required. Given the
11 nature of the job duties and the number of people not completing them would affect, Plaintiff and
12 the other members of the putative class would routinely stay hours after the scheduled shift ended
13 to ensure that all job duties were completed in order to not impact airport activities. Despite
14 voicing these concerns to Defendants, Defendants have not taken any action to correct the
practices.

15 26. Plaintiff alleges that he and the members of the putative class were not paid for
16 overtime on a routine basis.

17 27. Plaintiff alleges that Defendants would routinely roll-over overtime he and the
18 other members of the putative class worked to the next pay period so that the hours were paid at
19 the regular rate and not at the overtime rate.

20 28. California Labor Code § 1194 provides that an employee receiving less than the
21 legal overtime compensation is entitled to recover in a civil action the unpaid balance of the full
22 amount of this minimum wage or overtime compensation, including interest thereon, reasonable
23 attorney's fees, and costs of suit.

24 29. California Labor Code § 510(a) states: "Any work in excess of eight hours in one
25 workday and any work in excess of 40 hours in any one workweek and the first eight hours worked
26 on the seventh day of work in any one workweek shall be compensated at the rate of no less than
27 one and one-half times the regular rate of pay for an employee." California Labor Code § 510(a)
28 further states: "Any work in excess of 12 hours in one day shall be compensated at the rate of no

1 less than twice the regular rate of pay for an employee.” California Labor Code § 510(a) further
2 states: “[A]ny work in excess of eight hours on any seventh day of a workweek shall be
3 compensated at the rate of no less than twice the regular rate of pay of an employee.”

4 30. Throughout the Class Period, Wage Order No. 9-2001, Section (3) provided for
5 payment of overtime wages equal to one and one-half (1 1/2) times an employee’s regular rate of
6 pay for all hours worked over eight (8) hours per day and/or forty (40) hours in a workweek,
7 and/or for payment of overtime wages equal to double the employee’s regular rate of pay for all
8 hours worked in excess of twelve (12) hours in any workday and/or for all hours worked in excess
9 of eight (8) hours on the seventh (7th) day of work in any one workweek.

10 31. Defendants classified Plaintiff and putative class members as non-exempt,
11 therefore they were entitled to overtime compensation for all hours worked in excess of the hours
12 and time specified in the Wage Order, statutes and regulations identified herein.

13 32. As a matter of policy and/or practice, Defendants routinely suffered or permitted
14 Plaintiff and putative class members to work portions of the day during which they were subject
15 to Defendants’ control, and failed to compensate them. Accordingly, Defendants failed to
16 properly record the actual hours worked by Plaintiff and members of the putative class, and thus
17 failed to pay overtime wages for the actual amount of overtime hours worked.

18 ***Defendants’ Failure to Provide Accurate Wage Statements***

19 33. As a result of the meal and rest break, and overtime violations, described above,
20 Plaintiff and members of the Plaintiff Class were, and are, routinely provided wage statements
21 which do not truly and accurately reflect the number of hours worked by them, or the wages due
22 to them.

23 34. Based upon information and belief, Plaintiff and the other members of the putative
24 class did not receive wage statements.

25 ***Facts Regarding Willfulness***

26 35. Plaintiff is informed and believes and based thereon alleges that Defendants are
27 and was advised by skilled lawyers, other professionals, employees with human resources
background and advisors with knowledge of the requirements of California wage and hour laws.

36. Plaintiff is informed and believes and based thereon alleges that at all relevant times, Defendants knew or should have known, that the putative class members, including Plaintiff, were entitled to receive duty-free meal periods within the first five (5) hours of any shift of six (6) or more hours worked, and that any failure to do so requires Defendants to pay Plaintiff and the members of the putative class one (1) hour of wages per day for untimely, missed, or on-duty meal periods.

37. Plaintiff is informed and believes and based thereon alleges that at all relevant times, Defendants knew or should have known, that the putative class members, including Plaintiff, were and are entitled to one (1) ten (10) minute rest break for each shift of four (4) hours or more, and that any failure to allow said breaks requires Defendants to pay the putative class members, including Plaintiff, one (1) hour of wages per day for missed or on-duty rest breaks.

38. Plaintiff is informed and believes and based thereon alleges that at all relevant times, Defendants knew or should have known, that the putative class members, including Plaintiff, were and are entitled to overtime wages when working in excess of eight (8) hours a day.

39. Plaintiff is informed and believes and based thereon alleges that at all relevant times, Defendants knew or should have known, that the putative class members, including Plaintiff, were and are entitled to meal and rest breaks.

CLASS ACTION ALLEGATIONS

40. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

41. Plaintiff brings this action on behalf of himself and all others similarly situated as a class action, pursuant to Federal Rule of Civil Procedure 23. The class which Plaintiff seeks to represent are composed of, and defined as follows:

Rule 23 Class:

All employees who were or are employed by Defendants during the Class Period in California as “non-exempt employees.” As used in this class definition, the term “non-exempt employee” refers to those who Defendants have classified as non-exempt from the overtime wage provisions of the California Labor Code.

1 42. Rule 23 Class Period is the period from April 14, 2013, through and including the
2 date judgment is rendered in this matter

3 43. The class is so numerous that the individual joinder of all members is
4 impracticable. While the exact number and identification of class members are unknown to
5 Plaintiff at this time and can only be ascertained through appropriate discovery directed to
6 Defendants, Plaintiff is informed and believes that the class includes potentially hundreds of
7 members.

8 44. Common questions of law and fact exist as to all members of the class which
9 predominate over any questions affecting only individual members of the class. These common
10 legal and factual questions, which do not vary from class member to class member, and which
11 may be determined without reference to the individual circumstances of any class member,
12 include, but are not limited to, the following:

- 13 a. Whether Plaintiff and members of the proposed class are subject to and entitled to
14 the benefits of California wage and hour statutes;
- 15 b. Whether Defendants maintained accurate records of the hours worked by
16 employees;
- 17 c. Whether Plaintiff and members of the Plaintiff Class are entitled to overtime
18 compensation;
- 19 d. Whether Defendants had a standard policy of not providing meal and rest breaks
20 to Plaintiff and members of the putative class;
- 21 e. Whether Defendants failed to maintain accurate records of work performed by
22 members of the Class in violation of California Labor Code section 1174 and IWC
23 Wage Order 9, § 7;
- 24 f. Whether Defendants unlawfully and/or willfully deprived Plaintiff and Class
25 Members of meal and rest breaks and pay for missed breaks pursuant to California
26 Labor Code §§ 200, 226.7, 512, and 12 CCR § 11040;
- 27 g. Whether Defendants unlawfully and/or willfully deprived failed to compensate
28 employees for all hours worked;
- h. Whether Defendants unlawfully and/or willfully failed to provide Plaintiff and

1 members of the Plaintiff Class with true and proper wage statements upon payment
2 of wages, in violation of California Labor Code section 226(a);

- 3 i. Whether Plaintiff and members of the Plaintiff Class sustained damages, and if so,
4 the proper measure of such damages, as well as interest, penalties, costs, attorneys'
5 fees, and equitable relief; and
6 j. Whether Defendants' conduct as alleged herein violates the Unfair Business
7 Practices Act of California, Bus. & Prof. Code § 17200, *et seq.*

8 45. The claims of the named Plaintiff are typical of the claims of the members of the
9 putative class. Plaintiff and other class members sustained losses, injuries and damages arising
10 from Defendants' common policies, practices, procedures, protocols, routines, and rules which
11 were applied to other class members as well as Plaintiff. Plaintiff seeks recovery for the same
12 type of losses, injuries, and damages as were suffered by other members of the proposed class.

13 46. Plaintiff is an adequate representative of the proposed classes because he is a
14 member of the class, and his interests do not conflict with the interests of the members he seeks
15 to represent. Plaintiff has retained competent counsel, experienced in the prosecution of complex
16 class actions, and together Plaintiff and his counsel intends to prosecute this action vigorously for
17 the benefit of the classes. The interests of the Class Members will fairly and adequately be
protected by Plaintiff and his attorneys.

18 47. A class action is superior to other available methods for the fair and efficient
19 adjudication of this litigation since individual litigation of the claims of all Class Members is
20 impracticable. It would be unduly burdensome to the courts if these matters were to proceed on
21 an individual basis, because this would potentially result in hundreds of individuals, repetitive
22 lawsuits. Further, individual litigation presents the potential for inconsistent or contradictory
23 judgments, and the prospect of a "race to the courthouse," and an inequitable allocation of
24 recovery among those with equally meritorious claims. By contrast, the class action device
25 presents far fewer management difficulties, and provides the benefit of a single adjudication,
economics of scale, and comprehensive supervision by a single court.

26 48. The various claims asserted in this action are additionally or alternatively
27 certifiable under the provisions of the Fed.R.Civ.P. 23 because:

- 1 a. The prosecution of separate actions by hundreds of individual class
2 members would create a risk or varying adjudications with respect to
3 individual class members, thus establishing incompatible standards of
4 conduct for Defendants, and
5 b. The prosecution of separate actions by individual class members would
6 also create the risk of adjudications with respect to them that, as a practical
7 matter, would be dispositive of the interest of the other class members who
8 are not a party to such adjudications and would substantially impair or
9 impede the ability of such non-party class members to protect their
interests.

10 **COLLECTIVE ACTION ALLEGATIONS**

11 49. Plaintiff hereby incorporates each and every allegation contained above and
12 realleges said allegations as if fully set forth herein.

13 50. Plaintiffs further bring this suit as a Collective Action under the Fair Labor and
14 Standards Act, 29 U.S.C. § 201, et seq., (“FLSA”) on behalf of the “FLSA Class” defined as:

15 **FLSA Class:**

16 All persons who were, are, or will be employed by Defendants as “non-exempt
17 employees” in the United States within the applicable limitations period, which is three years
18 preceding the filing of the original Complaint herein plus such additional time as may be provided
19 pursuant to equitable tolling.

20 51. Plaintiffs allege that during the FLSA Class Period, they are and
21 were:

- 22 (A.) individuals who resided in the United States of America;
23 (B.) were employed as “non-exempt” employees for Defendants in the United
24 States within the three years preceding the filing of the complaint herein;
25 (C.) worked more than 40 hours in any given week;
26 (D.) did not receive all overtime compensation for all hours worked over 40 hours
27 in any given week;

1 (E.) worked regular hours for which they received no pay whatsoever;

2 (F.) are members of the FLSA Collective Class as defined in the preceding
3 paragraph in this Complaint; and,

4 (G.) have signed a consent to sue that shall have been filed in this court.

5 48. All claims involving the FLSA Collective Class have been brought and may
6 properly be maintained as a collective action under 29 U.S.C. § 216, because there is a well-
7 defined community of interest in the litigation, and the proposed FLSA Collective Class is easily
8 ascertainable by examination of the employment records that Defendants are required to maintain
9 by law, including but not limited to employee time clock reports and payroll records.

10 ***Plaintiff's Exhaustion of Administrative Remedies***

11 52. Plaintiff is currently complying with the procedures for bringing suit specified in
12 California Labor Code § 2699.3. By letter dated April 14, 2017 required notice to the Labor and
13 Workforce Development Agency ("LWDA") and Defendants of the specific provisions of the
14 California Labor Code alleged to have been violated, including the facts and theories to support
15 the alleged violations.

16 53. This Complaint will be amended when more than sixty (60) days have passed since
17 the date the notice was mailed to Defendants and the LWDA, if the LWDA chooses not to
18 investigate the allegations herein.

19 **FIRST CAUSE OF ACTION**

20 **MEAL AND REST BREAK VIOLATIONS**

21 **(CALIFORNIA LABOR CODE §§ 200, 226.7, 512, and 12 CCR § 11040)**

22 **(By Plaintiff and Members of the California Sub-Class Against All Defendants)**

23 54. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

24 55. California Labor Code § 226.7(a) provides that "No employer shall require any
25 employee to work during any meal or rest period mandated by an applicable order of the Industrial
Welfare Commission."

26 56. California Labor Code § 512 provides that "An employer may not employ an
27 employee for a work period of more than five hours per day without providing the employee with

1 a meal period of not less than 30 minutes, except that if the total work period per day of the
2 employee is no more than six hours, the meal period may be waived by mutual consent of both
3 the employer and employee.”

4 57. California Labor Code § 512 further provides that “An employer may not employ
5 an employee for a work period of more than 10 hours per day without providing the employee
6 with a second meal period of not less than 30 minutes, except that if the total hours worked is no
7 more than 12 hours, the second meal period may be waived by mutual consent of the employer
8 and the employee only if the first meal period was not waived.”

9 58. California Labor Code § 516 provides that the Industrial Welfare Commission may
10 adopt or amend working condition orders with respect to meal periods for any workers in
11 California consistent with the health and welfare of those workers.

12 59. Section 10 of Wage Order No. 9-2001 provides that “Unless the employee is
13 relieved of all duties during a 30-minute meal period, the meal period shall be considered an “on
14 duty” meal period and counted as time worked. An “on duty” meal period shall be permitted only
15 when the nature of the work prevents an employee from being relieved of all duties and when by
16 written agreement between the parties an on-the-job paid meal period is agreed to. The written
17 agreement shall state that the employee may, in writing, revoke the agreement at any time.”

18 60. Section (D) of Wage Order No. 9-2001, Section 11 provides that “If an employer
19 fails to provide an employee a meal period in accordance with the applicable provisions of this
20 order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of
21 compensation for each workday that the meal period is not provided.”

22 61. California Labor Code § 226.7(a) provides that “No employer shall require any
23 employee to work during any meal or rest period mandated by an applicable order of the Industrial
24 Welfare Commission.”

25 62. California Labor Code § 516 provides that the Industrial Welfare Commission may
26 adopt or amend working condition orders with respect to rest periods for any workers in California
27 consistent with the health and welfare of those workers.

28 63. IWC Wage Order, number 9-2001, section 12 required employers to authorize,
29 permit, and provide a ten (10) minute paid rest for each four (4) hours of work, during which

1 employees are relieved of all duties.

2 64. At all times, relevant hereto, California Labor Code § 226.7(b) and IWC Wage
3 Order, number 9-2001, section 12(B) required employers to pay one hour of additional pay at the
4 regular rate of compensation for each employee and each workday that a proper rest period is not
5 provided.

6 65. Throughout the Class Period, Plaintiff and the members of the putative class
7 consistently worked over five (5) hours per work period, and therefore, were entitled to a meal
8 period of not less than thirty (30) minutes prior to exceeding five (5) hours of employment.

9 66. Throughout the Class Period, Plaintiff and the members of the putative class sometimes
10 worked over ten (10) hours per work period, and therefore, were entitled to a second
11 meal period of not less than thirty (30) minutes.

12 67. Throughout the Class Period, Plaintiff and the members of the putative class did
13 not waive their meal periods, by mutual consent with Defendants or otherwise.

14 68. Defendants failed to comply with the required meal periods established by
15 California Labor Code § 226.7, California Labor Code § 512, California Labor Code § 516 and
16 the applicable Wage Order.

17 69. Defendants failed to compensate Plaintiff and members of the putative class with
18 premium wages when meal periods were missed, short, or late.

19 70. Pursuant to Sections 11 and 12 of Wage Order No. 9-2001, and California Labor Code
20 § 226.7(b) (which requires, in the event that “an employer fails to provide an employee a meal or rest
21 period in accordance with an applicable order of the industrial Welfare Commission, the employer
22 shall the employee one additional hour of pay at the employee’s regular rate of compensation for each
23 work day that the meal or rest period is not provided”), the members of the Class are entitled to damages
24 in an amount equal to one (1) hour of wages per missed meal period, in a sum to be proven at trial.

25 71. At all times relevant to this Complaint, each Defendants failed, and has continued to
26 fail, to timely provide Plaintiff and members of the putative class with meal periods.

27 72. Thus, throughout the Class Period, Defendants regularly:

28 (a) Failed to provide paid rest periods of ten (10) minutes during which Plaintiff
29 and the members of the putative class were relieved of all duties for each

1 four (4) hours of work; and

- 2 (b) Failed to pay Plaintiff and the members of the putative class one (1) hour of
3 pay at their regular rate of compensation for each workday that a rest period
4 was not permitted.

5 73. As a direct and proximate result of the acts and/or omissions of each Defendants,
6 Plaintiff and Class Members have been deprived of meal and rest period wages due in amounts to be
7 determined at trial.

8 74. Pursuant to California Labor Code §§ 226.7, 512, and Wage Order 9-2001, as a result
9 of Defendants' failure to pay Plaintiff and Class Members for all meal periods and rest periods, Plaintiff
10 and all Class Members are entitled to recover the unpaid meal and rest period wages, plus interest, fees
11 and costs thereon.

12 **SECOND CAUSE OF ACTION**

13 **FAILURE TO PAY OVERTIME WAGES**

14 **(By Plaintiff and Members of the California Sub-Class Against All Defendants)**

15 75. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

16 76. California Labor Code § 510(a) states: "Any work in excess of eight hours in one
17 workday and any work in excess of 40 hours in any one workweek and the first eight hours worked
18 on the seventh day of work in any one workweek shall be compensated at the rate of no less than
19 one and one-half times the regular rate of pay for an employee." California Labor Code § 510(a)
20 further states: "Any work in excess of 12 hours in one day shall be compensated at the rate of no
21 less than twice the regular rate of pay for an employee." California Labor Code § 510(a) further
22 states: "[A]ny work in excess of eight hours on any seventh day of a workweek shall be
23 compensated at the rate of no less than twice the regular rate of pay of an employee."

24 77. Defendants have failed and refused to pay to Plaintiff and each member of the putative
25 class all overtime wages due to them in compliance with California Labor Code including, but not
26 limited to, failing to pay all overtime accrued. Based upon information and belief, Plaintiff and the
27 other members of the putative class were not routinely paid overtime when they worked in excess of
28 eight (8) hours in a given day.

1 78. As a direct and proximate result of the acts and/or omissions of each Defendants,
2 Plaintiff and each member of the putative class has been deprived of overtime wages due in amounts
3 to be determined at trial.

4 79. The applicable overtime requirements fixed by the commission for Plaintiff and the
5 putative class, are found in Wage Order 9-2001.

6 80. Pursuant to California Labor Code §§ 1194 and 1194.2 as a result of Defendants'
7 failure to pay Plaintiff and the members of the putative class all overtime wages due, Plaintiff and
8 members of the putative class are entitled to each recover the unpaid overtime wages in an amount
9 equal to the overtime wages unlawfully unpaid, plus interest, fees and costs thereon.

THIRD CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS

VIOLATION OF CALIFORNIA LABOR CODE 226(a)

(By Plaintiff and Members of the Putative California Sub-Class Against All Defendants)

81. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

15 82. California Labor Code §226(a) sets forth reporting requirements for employers when they pay wages, as follows:

17 "Every employer shall . . . at the time of each payment of wages, furnish his or her
employees . . . an itemized statement in writing showing (1) gross wages earned;
18 (2) total hours worked by the employee . . . (3) the number of piece-rate units
19 earned and any applicable piece rate if the employee is paid on a piece-rate basis.
20 . . . (8) the name and address of the legal entity that is the employer and, if the
21 employer is a farm labor contractor, as defined in subdivision (b) of Section 1682,
22 the name and address of the legal entity that secured the services of the employer."

23 Section (e) provides:

24 "An employee suffering injury as a result of a knowing and intentional failure by
25 an employer to comply with subdivision (a) shall be entitled to recover the greater
26 of all actual damages or fifty dollars (\$50) for the initial pay period in which a
27 violation occurs and one hundred dollars (\$100) per employee for each violation
28 in a subsequent pay period, not exceeding an aggregate penalty of four thousand

dollars (\$4000), and shall be entitled to an award of costs and reasonable attorneys' fees."

83. Plaintiff and members of the Plaintiff Class were damaged by this failure to provide accurate wage statements because, among other things, Plaintiff and members of the Plaintiff Class were unable to determine the proper amount of wages owed to them, and whether they had received full compensation therefore.

84. Based upon information and belief, Plaintiff and the other members of the putative class were not provided wage statements at any time during their employment with Defendants.

85. Plaintiff and members of the Plaintiff Class request recovery of California Labor Code §226(e) penalties according to proof, as well as interest, attorneys' fees and costs pursuant to California Labor Code §226(e), and all other damages, attorneys' fees, costs, expenses and interest permitted by statute.

FOURTH CAUSE OF ACTION

**UNFAIR COMPETITION: CALIFORNIA BUSINESS AND
PROFESSIONS CODE § 17200, etc.**

(By Plaintiff, the California Sub-Class, and the General Public, Against All Defendants)

86. Plaintiff re-alleges and incorporates all preceding paragraphs as though fully set forth herein.

87. Section 17200 of the California Business and Professions Code prohibits any unlawful, unfair or fraudulent business act or practice.

88. Plaintiff brings this cause of action in a representative capacity on behalf of the general public and the persons affected by the unlawful and unfair conduct described herein. Plaintiff and members of the putative class have suffered, and continue to suffer, injury in fact and monetary damages because of Defendants' actions.

89. The actions by Defendants as herein alleged amount to conduct which is unlawful and a violation of law. As such, said conduct amounts to unfair business practices in violation of Business and Professions Code § 17200, *et seq.*

90. Defendants' conduct as herein alleged has damaged Plaintiff and the members of the putative class by denying them wages due and payable, by failing to provide proper meal and

1 rest breaks, by failing to pay overtime. Defendants' actions are thus substantially injurious to
2 Plaintiff and the members of the putative class, causing them injury in fact and loss of money.

3 91. Because of such conduct, Defendants have unlawfully and unfairly obtained
4 monies due to the Plaintiff and the members of the putative class.

5 92. All members of the putative class can be identified by reference to payroll and
6 related records in the possession of the Defendants. The amount of wages due Plaintiff and
7 members of the putative class can be readily determined from Defendants' records. The Class
8 Members are entitled to restitution of monies due and obtained by Defendant during the Class
9 Period as a result of Defendants' unlawful and unfair conduct.

10 93. During the Class Period, Defendants committed, and continues to commit, acts of
11 unfair competition as defined by § 17200, *et seq.*, of the Business and Professions Code, by and
12 among other things, engaging in the acts and practices described above.

13 94. Defendants' course of conduct, acts, and practices in violation of the California
14 law as mentioned in each paragraph above constitutes a separate and independent violation of §
15 17200, etc., of the Business and Professions Code.

16 95. The harm to Plaintiff and the members of the putative class of being wrongfully
17 denied lawfully earned and unpaid wages outweighs the utility, if any, of Defendants' policies
18 and practices and, therefore, Defendants' actions described herein constitute an unfair business
19 practice or act within the meaning of Business and Professions Code § 17200.

20 96. Defendants' conduct described herein threatens an incipient violation of
21 California's wage and hour laws, and/or violates the policy or spirit of such laws, or otherwise
22 significantly threatens or harms competition.

23 97. Defendants' course of conduct described herein further violates Business and
24 Professions Code § 17200 in that it is fraudulent, improper, and unfair.

25 98. The unlawful, unfair, and fraudulent business practices and acts of Defendants as
26 described herein-above have injured Plaintiff and members of the putative class in that they were
27 wrongfully denied the timely and full payment of wages due to them.
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FIFTH CAUSE OF ACTION

2

FAILURE TO PAY ALL WAGES AND OVERTIME COMPENSATION IN

3

VIOLATION OF THE FAIR LABOR STANDARDS ACT

4

(Against Defendants on behalf of Plaintiff
5 and Proposed Members of the Plaintiff Class)

6

7 99. Plaintiff re-alleges and incorporates all preceding paragraphs as though fully set
forth herein.

8

9 100. The Fair Labor Standards Act, 29 U.S.C. §201, et. seq., states that an employee
10 must be compensated for all hours worked, including straight time compensation and overtime
11 compensation. (29 C.F.R. §778.223 and 29 C.F.R. §778.315.) This Court has concurrent
12 jurisdiction over claims involving the Fair labor Standards Act pursuant to 29 U.S.C. §216.

13

14 101. Plaintiff also brings this lawsuit as a collective action under the Fair Standards
15 Labor Act, 29 U.S.C. §201, et. seq. (the “FLSA”), on behalf of all persons who were, are, or will
16 be employed by Defendants in a non-exempt hourly position during the period commencing three
17 years prior to the filing of this Complaint to and through a date of judgment, who performed work
18 in excess of forty (40) hours in one week and did not receive all compensation as required by the
19 FLSA for the hours worked. To the extent equitable, tolling operates to toll claims by the against
the collective employees against the Defendants, the collective statute of limitations should be
adjusted accordingly.

20

21 102. Questions of law and fact common to collective employees as a whole include, but
are not limited to the following:

- 22
- 23 a. Whether Defendants’ policies and practices failed to accurately record all
hours worked by Plaintiff and other collective employees;
- 24 b. Whether Defendants’ policies and practices were to write down the time
worked by Plaintiff and collective employees;
- 25 c. Whether Defendants failed to adequately compensate collective employees for
all hours worked as required by the FLSA, including the time worked through
their meal and rest periods;

- 1 d. Whether Defendants failed to include all remuneration in calculating the
2 appropriate rates overtime and straight time;
3 e. Whether Defendants should be enjoined from continuing the
4 practices which violate the FLSA; and
5 f. Whether Defendants are liable to the collective employees.

6 103. The Fifth Cause of Action for the violations of the FLSA may be brought and
7 maintained as an “opt-in” collection action pursuant to Section 16(b) of FLSA, 29 U.S.C. 216(b),
8 for all claims asserted by the representative Plaintiff because the claims of Plaintiff are similar to
9 the claims of collective employees.

10 104. Plaintiff and collective employees are similarly situated, have substantially similar
11 job requirements and pay provisions, and are subject Defendants’ common and uniform policy
12 and practice of failing to pay for all actual time worked and wages earned, failed to accurately
13 record all hours worked by these employees in violation of the FLSA and the Regulations
14 implementing the Act as enacted by the Secretary of Labor, and for failing to include all
15 remuneration in calculating overtime rates and straight time rates of employees.

16 105. Defendants are engaged in communication, business, and transmission throughout
17 the United States and are, therefore, engaged in commerce within the meaning of 29 U.S.C.
18 §203(b).

19 106. 29 U.S.C. §225 provides a three-year statute of limitations applies to willful
20 violation of the FLSA. The conduct by Defendants which violated the FLSA was willful.

21 107. Plaintiff and collective employees regularly worked in excess of forty (40) hours
22 in a workweek. Pursuant to the Fair Labor Standards Act, 29 U.S.C. §201, et. seq., Plaintiff and
23 the collective employees are entitled to compensation for all hours actually worked, and are also
24 entitled to wages at a rate not less than one and one-half times their regular rate of pay for all
25 hours worked in excess of forty (40) hours in any workweek.

26 108. Plaintiff and collective employees were all paid to Defendants on an hourly basis
27 for the hours worked up to forty (40) in a workweek, but Plaintiff and collective employees
28 worked more than forty (40) hours per workweek, and were not paid compensation for all hours
 worked, including overtime hours. Defendants also failed to pay Plaintiff, and collective

employees, compensation for the hours they worked performing duties primarily for the benefit of the employer during meal and rest periods.

109. For the purposes of the Fair Labor Standards Act, the employment practices of Defendants were and are uniform throughout California and the United States in all respects material to the claims asserted in this Complaint.

110. Defendants violated the Fair Labor Standards Act by failing to pay hourly employees for all hours worked, including overtime hours, as alleged herein above.

111. As a result of Defendants' failure to pay overtime compensation for hours worked, as required by the FLSA, Plaintiff and collective employees were damaged in an amount to be proved at trial.

112. Plaintiff, therefore, demands that he and collective employees be paid overtime compensation as required by the FLSA for every hour of overtime in any workweek for which he was not compensated, compensation for meal and rest periods, compensation for miscalculation of overtime and straight time, plus liquidated damages, interest and statutory costs as provided by law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself, and on behalf of the members of the putative class, prays for judgment against Defendants as follows:

1. For an order certifying the proposed class;
 2. For nominal damages;
 3. For equitable relief, in the nature of declaratory relief, restitution of all monies due to Plaintiff and members of the putative class, and disgorgement of profits from the unlawful business practices of Defendants, and accounting;
 4. For penalties as permitted by the California Labor Code, and the regulations, standards and applicable wage orders promulgated thereunder, specifically including, but not limited to, for penalties permitted by California Labor Code §§ 226, 226.3, 226.7, 510, 512(a), 551, 552, 558, 1197 and 1198;
 5. For interest as permitted by statute, including California Labor Code § 218.6;

1 6. For costs of suit and expenses incurred herein as permitted by statute, including
2 California Labor Code §§ 226 and 1194;

3 7. For attorney's fees as permitted by statute, including California Labor Code §§
4 226 and 1194; and

5 8. For all such other and further relief that the Court may deem just and proper.

6 DATED: April 14, 2017

BRADLEY/GROMBACHER, LLP

7
8 By: /S/ Kiley L. Grombacher, Esq.
9 Kiley L. Grombacher, Esq.
10 Attorneys for Plaintiff

11 **JURY DEMAND**

12 Plaintiff demands a trial by jury on all issues so triable as a matter of right.

13 DATED: April 14, 2017

BRADLEY/GROMBACHER, LLP

14
15 By: /S/ Kiley L. Grombacher, Esq.
16 Kiley L. Grombacher, Esq.
17 Attorneys for Plaintiff